

## **DRAFT OUTLINE FOR MANUAL ON PANEL FORMATION**

### **I. Introduction -- For example....**

- A. Mission of the SAB: To make a positive difference in the production and use of science at EPA.
- B. Operating principles applicable to Panel formation
  - 1. Technically sound advice: Panelists who have recognized/demonstrated expertise
  - 2. Independent advice: Panelists who are independent of the Agency, interested and affected parties, and personal conflicts-of-interest (COIs)
  - 3. Balanced advice: Panelists who collectively cover a range of technically credible positions and whose individual biases are balanced.
  - 4. Effective advice: Panelists who can generate advice that the Agency can use.

### **II. Overview of the process: The flow diagram (**Attached**)**

### **III. Discussion of the process**

#### **A. PRE-KICKOFF Activity**

- 1. The Staff maintain continual communication with Agency offices ("walk the traplines") to identify issues/targets-of-opportunity that would benefit from SAB involvement; e.g., Consultations and Advisories, in addition to Review.
- 2. The Staff educate Agency offices and staff about the SAB, its processes and its people.

#### **B KICKOFF Activity**

- 1. The Charge needs to be sufficiently detailed that it is clear what kinds of expertise is needed. In practice, there may well be a negotiation between Agency and SAB staff to "fine tune" the Charge in order to insure that a) it is focused on the appropriate (i.e., "technical") topics and b) it is sufficiently structured to guide a review.
- 2. The DFO and the Staff Director recruit a Chair.
  - a. If the issue is being handled by a Standing Committee, then the Panel Chair will be the Chair of the Standing Committee or someone else on the Committee, appointed by that Standing Committee Chair.
  - b. If the issue is being handled by the EC, then the Panel Chair should (ideally) be an EC member, agreed to by the EC. In any event, the person selected as Chair should be "cleared" through the EC Chair
  - c. Most often, the Chair will be selected and announced before the WIDECAST. In any event, the Panel Chair's bio will be a part of Short List Web presentation available for public comment
- 3. Recruitment of a Panel Chair involves discussions with various SAB M/Cs (usually Committee Chairs) during this process. These individuals are generally well-known to the Staff, their 450s (soon to be A-450s) are on hand, and COI issues can be readily explored by personal review and contact.

NOTE: The selection of the Panel Chair could be done by the EC. In many respects this already occurs, although it could be done more formally.

#### C. WIDECAST Activity

1. The Federal Register (FR) notice is a formal process for alerting the public.
2. Staff sends copies of the FR notice to individuals and groups who are interested/affected. The Agency is expected to provide Staff with their list of such individuals and groups, in order to supplement the Staff's own list.
3. The Staff's list of contacts grows, in part, because the office regularly posts an "SAB Projected 6-Month Calendar" on the Website, alerting the public to the fact that the SAB will likely be conducting a review of the issues listed. Members of the public often become followers at that early stage and contact DFOs for additional information.
4. The OSAB's "People Data Base" (PDB) contains information on all M/Cs and candidates. The PDB is being re-tooled to make it possible to effectively and efficiently query the system for people with stated expertise(s).
5. WIDECAST individuals provide key information about their interest and availability that helps the Staff winnow down the large list and identify individuals to provide conflict-of-interest information

#### D. COI/BOB (*conflict-of-interest and balance-of-bias*): *At this point, the new procedures for COI and BOB kick in and continue throughout the remainder of the process.*

1. *The Staff makes a determination as to whether or not the subject of the Panel is "a particular matter".*
2. *The Alternate-450 form (A-450) will be key to this phase of the operation.*
3. *Particularly, as everyone gets used to the new procedure, there will likely be a need for personal interactions in order to gather additional information and/or clarification.*
4. *Decisions on COI and perceived COI are made on best-judgment application of criteria; such as,*
  - a. *The proximity of the interest to the matter under discussion. (This goes to the issue of "direct and predictable effect" on the interest.)*
  - b. *The magnitude of the interest*
  - c. *The controversy surrounding the issue?*
5. *The generation of waivers and letters-of-determination (LODs) remains a non-trivial matter, as perhaps well it should be. However, the considerable transaction costs need to be considered.*

#### E. SHORT LIST

1. This set of boxes is effected linearly, from left to right.
2. Based on consultation with the Panel Chair, the Staff Director plays a pivotal role in examining the proposed panel to determine whether adequate consideration has been given to matters of particular to the Agency and the Board; e.g.,
  - a. Expertise, stature, and authoritative-ness
  - b. COI and BOB
  - c. Consideration of various issues, such as "kids", social sciences, environmental justice, etc.

- d. Diversity
  - 3. The biosketches are drafted by (or for) the Short List members and mounted on the Website with their approval.
  - 4. The public is invited to
    - a. Provide comments on the Short List members (including the chair), including any additional information on the candidates
    - b. Suggest possible panels derived from the list of candidates
- NOTE: No new nominees are solicited or accepted at this point.

#### F. SELECTION

- 1. The accountable decision-maker of record is the Staff Director.
- 2. The Panel Chair plays a significant role in determining the composition of the Panel.
- 3. The EC Chair may be involved, especially in particularly controversial reviews.
- 4. Posting of the final Panel selection on the Website is only for information, not for comment.

**This same information is presented in tabular form in the attached "TABLE OF MAJOR DECISIONS RELATED TO STEPS IN PANEL FORMATION"**

#### IV. Details of the steps; for example...

##### A. KICKOFF

- 1. Receiving and evaluating the Charge -- include examples of good Charges that provide focused technical questions, rather than broad policy questions.
- 2. Selecting the Panel Chair -- include examples of various ways that this can happen.

##### B. WIDECAST

- 1. Federal Register notice -- include sample notices
- 2. Interested and affected parties -- include discussion of identifying interested and affected parties and samples of notifications
- 3. Staff-generated list -- include examples of sources of such names
- 4. Agency-generated list -- include examples of Agency suggestions

##### C. Conflict-of-interest (COI) determination

- 1. Information collected: "Alternate-450 (A-450)" -- a detailed discussion the form
- 2. What triggers concern and follow-up phone calls.
- 3. Information sought in follow-up phone calls and how it is recorded/maintained.
- 4. Considerations/criteria in evaluating the information -- include hypothetical examples.
- 5. Distinctions between COI and perceived COI.
- 6. Distinctions between waivers (for cases in which a judgment is made that the value of person's advice outweighs the COI) and "letters of determination" (for cases in which it a reasonable person might perceive a COI but the Staff has judged that one does not exist).
- 7. Considerations/criteria in reaching/recording decisions on waivers or LODs.

##### D. SHORT LIST

- 1. Procedures for going from WIDECAST to SHORT LIST; e.g.,
  - a. Filter on interest
  - b. Filter on availability

- c. Filter on expertise
  - d. Filter on COI/BOB
- 2. Biosketches for posting on SAB Website for public comment
  - a. Content
  - b. Uniformity
  - c. Approval by the candidate

#### E. SELECTION

- 1. Discussion of selection process -- include hypothetical examples
- 2. Document the Panel Selection process -- include an example of a "Panel Selection Discussions" document (about 15 pages) that is currently capturing summarizing the process for a particular case.